IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.3650 of 2005

Shri Kalidas Bhagwat Wadekar..Petitioner
vs
Chairman,Standing Committee @
President Z P and ors.... respondents

Mr Dilip Bodake for petitioner
Mr N.P.Deshpande for respondent nos.l and 2
Mr.S.K.Chinchlikar AGP

CORAM; A.P.SHAH J.
Dt 28.9.2005

P.C.

. This petition under Article 226 of the Constitution of India takes exception to the order dated l0.5.2005 passed by the Divisional Commissioner, Pune Division, Pune in Grampanchayat Appeal No.4/2004 whereby the Divisional Commissioner has confirmed the order dated 6.8.2004 passed by the Standing Committee, Zilla Parishad,Pune removing petitioner from the post of Upa-Sarpanch and further disqualified the petitioner from contesting the election as member of Grampanchayat for a period of six years. Learned counsel for the petitioner has confined his challenge only to the later part of the order of the Divisional Commissioner disqualifing the

petitioner from contesting the election for six years.

2 The petitioner was elected as member of the Chakan Grampanchayat on 28.6.2000 and thereafter was elected as Upa-Sarpanch. A show cause notice dated 27.l.2004 was issued to the petitioner by the Chief Executive Officer Zilla Parishad as to why action should not be taken against him under section 39(l) of the Bombay Village Panchayats Act,l958, hereinafter referred to as the Act,for misuse of power and preparing a false record. The petitioner submitted his reply to the show cause notice. Thereafter the matter was placed before the Standing Committee of the Zilla Parishad and the Standing Committee passed Resolution No. 422 dated 26.5.2004 directing removal of the petitioner from the post of Upa-Sarpanch under section 39(l) of the said Act. The petitioner preferred an appeal against the order passed by the Standing Committee under section 39(3) of the Act before the Divisional Commissioner,Pune which came to be disposed vide order dated 6.8.2004 confirming the order of the Standing Committee and further disqualifying the petitioner from contesting election as member of the Grampanchayat for a

period of six years.

3. Mr Bodake, learned counsel appearing for the petitioner submitted and not without sufficient force that the order of the Divisional Commissioner disqualifying the petitioner from contesting election for a period of six years is wholly without jurisdiction and is beyond the power conferred by section 39(l) of the Act. Section 39 interalia reads as follows:

> "39(l) The (Standing Committee) may... remove from office any member of any Sarpanch or Upa-Sarpanch who has been (guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of) or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the (Standing Committee) also be removed from the Panchayat.
>
> Provided-------
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> (l-A) Where a person is removed from office

of the Sarpanch or Upa-Sarpanch,he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.

(2) The Standing Committee may subject to like condition disqualify for a period not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (l).

Provided --------

(3) Any person aggrieved by an order of the Standing Committee under sub-section (l) or (2) may, within a period of thirty days from the date of the communication of such order,appeal to the Commissioner"

4. A plain reading of the above provision shows that it empowers the Standing Committee to remove any Sarpanch or Upa-Sarpanch who has been found guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is

persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the (Standing Committee) also be removed from the Panchayat. Under sub-section (l-A) if a person is removed from office of the Sarpanch or Upa-Sarpanch,he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat. Under sub-section (2) the Standing Committee is empowered to disqualify any person for a period not exceeding five years, who has been guilty of the acts and omissions specified in sub-section (l). In the present case the petitioner was removed from the post of Upa-Sarpanch by the Standing Committee. However, there was no order for removal of the petitioner from the panchayat nor any direction was issued for disqualification under sub-section (2) of the said Act. The impugned order of the Divisional Commissioner so far as it disqualifies the petitioner for a period of six years is therefore totally unsustainable. In the first place section 39 does not contemplate disqualification for a period of six years. Secondly, the Standing Committee has not recommended any disqualification under sub-section (2) of section 39 . Sub-section

(2) contemplates disqualification of five years. It appears that the Divisional Commissioner has relied upon section l4(A). However, section l4A is applicable only to a person who has been convicted for offence punishable under certain provisions of the IPC or Bombay Village Panchayat Act or in case he is found to be guilty of any corrupt practice under section l5 of the said Act. Learned counsel appearing respondents fairly conceded that section l4A has no application to the present case. In the circumstances, the direction issued by the Divisional Commissioner disqualifying the petitioner for a period of six years cannot be sustained and is hereby quashed and set aside. Rule is accordingly made partly absolute with no order as to costs.